

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BENJAMIN MUNOZ JR.,

Plaintiff,

v.

PETER F. POLLARD,

Defendant,

**CIVIL ACTION
NO. 18-cv-40033-DHH**

ORDER

September 12, 2018

Hennessy, M.J.

Pro se Plaintiff Benjamin Munoz Jr. (“Plaintiff”) commenced the instant action by filing a complaint on March 12, 2018. Docket No. 1. A summons was issued as to Defendant Peter F. Pollard (“Defendant”) on May 11, 2018, who was later served with the complaint on July 10, 2018. See Docket Nos. 6, 7. Defendant had until July 31, 2018 to respond or otherwise move with respect to the complaint. See Fed. R. Civ. P. 12(a).

On August 7, 2018, Plaintiff filed a motion for default judgment against Defendant due to Defendant’s failure to timely respond to the complaint. Docket No. 8. That same day, Defendant filed both an opposition to Plaintiff’s motion for a default judgment (Docket No. 10) and a motion for an extension of time to file an answer or other responsive pleading by August 31, 2018. Docket No. 9. As grounds for his motion, Defendant stated that he had been waiting for a determination as to whether the Massachusetts State Police would provide him counsel in this matter, and was thus delayed in obtaining counsel to help him formulate a response to the complaint. Id. at p. 1.

On August 8, 2018, I issued an electronic order holding the parties' respective motions in abeyance until this Court received an executed Consent to Proceed before a U.S. Magistrate Judge form (the "Consent Form"). Docket No. 11.

On September 10, 2018, the parties' executed Consent Form was filed with this Court, wherein the parties consented, in accordance with 28 U.S.C. § 636(c) and Rule 73(b) of the Federal Rules of Civil Procedure, to have me conduct all further proceedings in this action. Docket No. 13.

Also on September 10, 2018, Plaintiff filed a document styled as a motion for Defendant to disclose any information pertaining to this case. Docket No. 14. Just yesterday, September 11, 2018, Defendant filed a motion to dismiss the complaint for failure to state a claim and for lack of subject matter jurisdiction. Docket No. 16.

Because the parties have, as of this week, consented to my jurisdiction over this matter, the Court concludes as follows:

Plaintiff's motion for a default judgment (Docket No. 8) is DENIED. Among other things, I find Defendant proffered a persuasive reason for his failure to file a timely response to the complaint. In addition, the Court has a strong preference for having cases decided on the merits. Cabot v. Lewis, No. 13-11903-FDS, 2017 WL 1024789, at *1 (D. Mass. Mar. 15, 2017) (citing Medeiros v. United States, 621 F.2d 468, 470 (1st Cir. 1980)).

Defendant's motion for extension of time to answer or otherwise move with respect to the complaint (Docket No. 9) is GRANTED, and the Court considers timely Defendant's motion to dismiss for failure to state a claim and for lack of subject matter jurisdiction (Docket No. 16).

Pursuant to Local Rules of the Court,¹ “[a] party opposing a motion shall file an opposition within 14 days after the motion is served, unless (1) the motion is for summary judgment . . . or (2) another period is fixed by rule, statute, or by order of the [C]ourt.” L.R. 7.1(b)(2). Because Plaintiff is proceeding pro se in this matter, the Court will allow Plaintiff to submit opposition to Defendant’s motion within 21 days of service of Defendant’s motion. Accordingly, the Court ORDERS Plaintiff to file an opposition to Defendant’s motion to dismiss, if he chooses to do so, by no later than October 2, 2018.

Furthermore, this Court ORDERS each party to prepare and serve initial disclosures, as required by Fed. R. Civ. P. 26(a)(1), on or before October 1, 2018. In light of the order as to initial disclosures, Plaintiff’s styled motion for Defendant to disclose certain information (Docket No. 14) is DENIED.

CONCLUSION

Plaintiff’s motions for default judgment (Docket No. 8) and disclosure of information (Docket No. 14) are DENIED. Defendant’s motion for extension of time to respond (Docket No. 9) is GRANTED. The Court hereby ORDERS the parties to prepare and serve initial disclosures, as required by Fed. R. Civ. P. 26(a)(1), on or before October 1, 2018. The Court hereby ORDERS Plaintiff to respond to Defendant’s motion to dismiss (Docket No. 16) by no later than October 2, 2018.

/s/ David H. Hennessy
David H. Hennessy
United States Magistrate Judge

¹ United States District Court, Local Rules of the United States District Court for the District of Massachusetts, http://www.mad.uscourts.gov/general/pdf/LC/2018%20Local%20RulesEffectiveJune_1_2018.pdf.